United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

ORIGINAL
With proof of service

74-1851

B/S

United States Court of Appeals

For the Second Circuit.

ROBERT A. W. CARLETON, JR., D/B/A
CARLETON BROTHERS COMPANY,

Plaintiff-Appellant,

-against-

UNION FREE SCHOOL DISTRICT NO. 8,
TOWN OF ORANGETOWN, ROCKLAND COUNTY,
NEW YORK, GEORGE W. RENC, LEE N. STARKER,
EDWARD C. MANNING, WALTER REINER, RICHARD
STOBEAUS, AND CAUDILL, ROWLETT AND SCOTT

Defendants-Appellees

On Appeal From the District Court of
the United States For the Southern District
of New York

APPELLANT'S BRIEF UPON APPEAL

ROBERT A. W. CARLETON, JR.
Plaintiff-Appellant, Appearing Pro Se
1078 Anderson Avenue
Palisades, New Jersey 07024

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BRIEF OF PLAINTIFF-APPELLANT

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BRIEF OF PLAINTIFF-APPELLANT

The Issues Presented For Review

1. Does the complaint state a valid cause of action for relief from a judgment or order?

2. May relief from a judgment or order be obtained by an independent action?

3. Did plaintiff's motion to renew and/or reargue violate local rule 9(m)?

4. Were defendants entitled to summary judgment as a matter of law?

Statement of the Case

This is an appeal by Robert A. W. Carleton, Jr., doing business as Carleton Brothers Company ("Carleton") from a final judgment entered on April 10th, 1974 (App. 107) in the United States District Court for the Southern District of New York pursuant to an order by the Honorable Inzer B. Wyatt, granting two motions brought on behalf of all defendants for summary judgment and from an order entered on May 13th, 1974 (App. 184) denying plaintiff's motion for renewal and/or reargument of said motion.

The lower court action was against Union Free School District No. 8, Town of Orangetown, Rockland County, New York ("School District"), George W. Renc ("Renc"), Lee N. Starker ("Starker"), Edward C. Manning ("Manning"), Walter Reiner ("Reiner"), Richard Stobaeus ("Stobaeus") and Caudill, Rowlett & Scott ("Caudill") for relief from a judgment entered on or about December 10th, 1969, in the United States District Court for the Southern District of New York in an action brought by Carleton against the same defendants joined herein, bearing file number 64-CIV. 3498 (hereinafter called the "first action") and for the equitable rescission of the stipulation upon which said judgment was entered as well as the general releases executed contemporaneously therewith. Carleton alleged in the lower court that he was induced by trick and device to consent to the said stipulation and to sign the said releases as the result of duress,

threats, pressure, extortion and overbearing on the part of the defendants and others, that there was an inadequacy of consideration, and related grounds. Carleton contended that as a result of the said actions of the defendants and others, resulting in the judgment discontinuing the first action, the stipulation upon which it was based, and the general releases which were executed contemporaneously therewith, he was entitled to relief from the said judgment, the equitable rescission of the stipulation upon which it was based, and the equitable rescission of the general releases executed contemporaneously therewith.

The defendants moved the District Court for judgment dismissing the complaint, pursuant to Rules 12 and 19 and for summary judgment, pursuant to Rule 56. By a decision dated April 5th, 1974, this Court granted summary judgment in favor of all defendants and the decision was subsequently reduced to a judgment entered April 10th, 1974.

Subsequently, the plaintiff has moved the District Court for the renewal and/or reargument of the defendants' motion for summary judgment. The plaintiff's motion for renewal and/or reargument was denied by Judge Wyatt.

This appeal, therefore, is from the judgment dismissing the plaintiff's complaint as well as from the order denying the plaintiff's motion for summary judgment.

SUMMARY OF THE COMPLAINT

Carleton alleged in his complaint that there was a prior litigation between the same parties hereto. In the first action, Carleton sued the defendants herein for over One and a Half Million Dollars for breach of contract, extra work and change orders above and beyond that called for within the contract, and the inducement by one of the defendants to cause the other to breach the said contract. The contract in question concerned the construction of a school building, and Carleton was the general contractor.

Carleton alleged that the complaint in the first action set forth a good and sufficient cause of action for the said sum of money and that it was substantially with merit.

Carleton alleged that the proceedings in the first action commenced to a point whereat a stipulation was entered into between counsel for all of the parties thereto settling the said action upon certain stated terms and conditions and that predicated upon the said stipulation an order was entered discontinuing the prior action. Contemporaneously therewith and shortly thereafter Carleton alleged that certain general releases were issued by him.

The complaint herein explains that the execution of the stipulation of settlement, the entry of the order settling the

first action and the execution of the general releases were entered into by him while he was in the state of diminished mental capacity, as a direct result of trick and device, duress, threats, pressure, extortion and overbearing on the part of the defendants herein and others, and without adequate consideration.

Accordingly, Carleton seeks in this action the recission of the stipulation and the general releases and relief from the order settling and discontinuing the first action.

STATEMENT OF THE FACTS

In 1964, Carleton retained counsel to represent him in an action against the defendants herein for damages arising out of a construction contract for the erection of a school building, for which Carleton was the general contractor. That action was filed in the District Court in 1964 and bore the Index Number 64-CIV-3498. In essence, Carleton concluded in that action ("the first action") that as a result of certain breaches of the said contract, additional work and change orders, Carleton was entitled to a sum of money in excess of One and a Half Million Dollars. Carleton also asked for damages on the theory that certain defendants were liable because they induced the claimed breach of the said contract.

The case was assigned to the Honorable Milton Pollack, and pursuant to local calendar rules, a pre-trial order was entered, with the consent of all parties. The first case can best be understood by a review of Judge Pollack's pre-trial Order which was annexed to plaintiff's affidavit in opposition to the prior motion for summary judgment as Exhibit A.

Unfortunately, Carelton had retained counsel whose specialty was personal injury litigation and who lacked the requisite expertise in construction contract litigation. Counsel for Carleton in the first action was desirous of settlement and

refused to proceed to trial and in pursuance of those desires attempted to compel Carleton to agree to settle the first action for a fraction of the ad damnum clause.

Carleton was consistent in his opposition to such settlement and remained adamant during attempts to induce him to agree to the settlement. This covered a period of time of approximately March, 1969 through December, 1969. During this period of time a consultant on construction litigation, in the form of an architect, was retained by counsel for Carelton in order to assist them in discouraging Carleton by emphasizing a purported weakness in the cause of action.

When all efforts to obtain Carleton's consent to a settlement failed, counsel for Carleton took advantage of a situation in which Carleton found himself which resulted in Carleton's diminished mental capacity, and induced Carleton to settle the action by virtue of trick and device. During the month of December, 1969, Carleton was a bachelor, 60 years of age, residing in his family home with his mother, who was suffering from a diabetic condition and a heart ailment, from which she subsequently died.

Carleton and his dying mother had pledged all of their worldly possessions, including real estate, securities, etc., in substantial amounts, toward a performance bond on the construction contract which was the subject of the litigation and various loans

needed to obtain money to fulfill Carleton's obligations as general contractor.

As a result of the defendant's breaches of said contract, causing the construction phase to be grossly expanded, with the attendant increased payroll costs, and with the defendants' withholding of monies then due to Carleton, Carleton found himself in a condition of near financial disaster and was on the verge of bankruptcy.

The insurance company who issued the performance bond was threatening proceedings against Carleton and his dying mother and the various banks were threatened similarly.

Carleton's mother, who spent a substantial portion of her day with Carleton, pleaded and demanded that she be put in the position to have her name cleared of the various encumbrances and blots upon her reputation. She obtained the assistance of Carleton's brother and sister and the three applied extreme emotional pressure upon Carleton to cause him to "set things right" for Carleton's dying mother so that she may die in peace.

Accordingly, during the month of December, 1969, a month which followed repeated attempts by Carleton's counsel to obtain Carleton's consent to a settlement, Carleton found himself in a state of emotional upheaval and was in fact ripe for trick and device perpetrated upon him at that time.

Counsel for Carleton finally informed Carleton that he could alleviate his financial burdens and emotional pressures very easily by settling the litigation, obtaining certain funds pursuant

to the settlement, paying off his debt to the bonding company and then vacating the settlement and proceeding with the litigation, using the settlement funds to pay off the bonding company which would prevent an impending disaster and alleviate the emotional pressures which Carleton found were inflicted upon him by his family.

Counsel for Carleton had informed Carleton that he had known Judge Pollack prior to his ascending to the bench and had been able to put things over upon this judge while the judge was a trial attorney. The fact that Judge Pollack was now a judge would still not prevent counsel for Carleton from putting things over upon him and accordingly there would be no problem with obtaining these emergency funds by means of settlement and then proceeding with the litigation thereafter.

To this end, Carleton was instructed to agree with anything that happened in court and to answer "yes" to all questions asked of him by his counsel and by the judge in order to result in obtaining the settlement.

The transcript of the proceedings which resulted in the entry of the order discontinuing the first action, is a true reflection of the happenings which resulted in the judgment and Carleton's comments upon the record therein were precisely at the direction of his counsel, except for volunteered statements which, if the record were to be examined minutely, would show Carleton's concern to get the bonding company off his back and to clear his

mother. Subsequent to the entry of the order settling the first action, Carleton visited the office of his counsel for the purpose of proceeding with the litigation, and was informed during late February of 1970 or early March of 1970, that his counsel would not proceed and that as far as his counsel was concerned the litigation had terminated.

As a result of this "enlightenment", Carleton made every effort humanly possible to obtain relief, which an attorney would have realized was a Rule 60 motion, or an independent action for relief from an order or judgment and the rescission of certain documents. Carleton attempted to visit Judge Pollack and explain the situation in detail (but Judge Pollack rightly felt that he should not meet with Carleton alone). There followed protracted correspondence between Carleton and Judge Pollack, the New Jersey Commissioner of Insurance and Banking, the Attorney General of the State of New York, various law firms, United States Senator Clifford Case, Judge Murray I. Gurfein, U.S. Supreme Court, the Grievance Committee of the Association of the Bar of the City of New York, etc., in an attempt to obtain the relief he desired.

During this period of time, Carleton made every conceivable effort to obtain the assistance of counsel and was unable to do so. His efforts, although they lacked results, reflected the tenacity, the singleness of purpose, and a determination evidencing his just beliefs in his position.

From date when Carleton learned that his counsel would not proceed to trial to the date when the complaint was filed in this third action, Carleton tenaciously proceeded in every manner which he thought might be effective to obtain the results sought in this litigation.

To this end, and as a direct result of a letter received from Judge Gurfein, a copy of which is annexed to the moving papers, Carleton commenced an independent action seeking this relief (hereinafter referred to as the "second action"). Unfortunately, that second action involved the filing of a complaint practically identical to the first action, based on the grounds of res judicata. This second action was dismissed in 1973 and the motion to reargue was denied in 1974.

Thereafter, Carleton found himself in a financially debilitated condition and was unable to seek counsel willing to represent him formally in a third action due to both his inability to pay a fee and the fact that a third action would involve allegations of misconduct on the part of certain members of the New York Bar.

It is with the assistance of counsel advising him that Carleton has proceeded pro se in the current carefully drafted cause of action for the relief sought.

POINT I

THE COMPLAINT STATES THE CAUSE OF ACTION UPON WHICH RELIEF MAY BE GRANTED AND RELIEF FROM A JUDGMENT OR ORDER MAY BE OBTAINED BY AN INDEPENDENT ACTION

Rule 60(b) of the Federal Rules of Civil Procedure, governing relief from a judgment or order, discusses the grounds for relief by motion and then states:

> "This rule does not limit the power of a Court to entertain an independent action to relieve a party from a judgment, order, or proceeding ... or to set aside a judgment for fraud upon the court. Ritz of Corum Nobus Corum Vobis Audita Querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining new relief from a judgment shall be by motion as prescribed in these rules or by an independent action."

It is interesting to note that Judge Murray I. Gurfein in a letter dated June 20, 1972, advised Mr. Carleton that if he wished to commence an action based upon the grounds he has been setting forth, he should contact either a lawyer or the Pro Se clerk of this Court for aid in presenting the claim. (Appendix at Page 162).

Carleton contends that defendants' motions for summary judgment are totally without merit. There can be no doubt that Carleton has stated a cause of action upon which relief

can be granted and Carleton further contends that there is no other way in which relief of this nature could have been sought when this action was commenced.

Defendants' assertion that this Court lacks jurisdiction is ludicrous because no other court, save for an appellate court, can offer relief from an order entered in this Court.

The doctrines of collateral estoppel and res judicata are equally ludicrous as defenses to the causes of action set forth in the complaint because defendants assert the very items sought to be rescinded as collaterally estopping and determining this action. Only a subsequent position taken by Carleton or judgment of reaffirmance would operate as affirmative defenses. As to the affirmative defenses of the Statute of Limitations, all of defendants' references are to Rule 60 of the Federal Rules of Civil Procedure and there is a 6-year statute of limitations for an independent suit for the same relief.

The affirmative defense of pleading release as a bar to a suit to rescind that release is not deserving of further comment.

Likewise, payment may not be asserted as an affirmative defense because the sum settled for was not the sum sued for and only amounts to 7 cents on the dollar. Defense counsel erred in

his argument because he should have pleaded accord and satisfaction and even if he had done so this suit seeks the rescission of that accord and satisfaction.

As to defendants' assertion that the complaint must be dismissed because of a failure to join necessary parties, it is respectfully asserted that joinder of interested parties cannot be compelled in this action because the bonding company sought to be joined herein by the defendants was not a party to the original action. The fact that monies were paid on account of the plaintiff herein to the bonding company, or for that matter anyone else, does not make those recipients of money paid on account of the plaintiff necessary parties to this action.

Assuming arguendo, if the bonding company were to be joined it should be alligned according to its real interest in the controversy, which would require treating the bonding company as a party plaintiff for the purpose of determining any additional money which might be owed to it. If defendants' reasoning were held to be valid, plaintiff's prior attorneys, who received money on account of the plaintiff in the prior action, should also be joined as necessary parties. However, such reasoning is erroneous because in determining whether to dismiss this action for the non-joinder of indispensible parties, the Court would adhere to guidelines set down in Rule 19(b) of the Federal Rules of Civil Procedure which permits a Federal court to proceed in the absence

of otherwise indispensible parties if "equity and good conscience" permit.

Should plaintiff prevail in this action without the presence of the bonding company, the bonding company's rights would in no way be prejudiced as they could either join in the prior litigation, or sue for additional monies. While it is true that should plaintiff prevail in this action, defendants may be collaterally estopped in an independent action brought on behalf of the bonding company, no prejudice would accrue to the bonding company should it desire to institute a separate proceeding, because determination herein would be considered res judicata against it. In other words, while an adjudication against plaintiff would not preclude any rights of the bonding company, an adjudication in favor of the plaintiff might be available to them by way of collateral estoppel.

The question of requesting summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, upon the grounds that there are no triable issues of fact, predicated by the assertions made in the complaint herein, liberally interpreted in favor of the plaintiff for the purpose of this motion, is unbelievable because if each and every fact alleged by the plaintiff is proven to be true, not only is the plaintiff entitled to the judgment sought, but the Bar Association would take a serious interest in the events which led to the curtailment of plaintiff's

rights.

When fraud is asserted against an attorney, it is respectfully submitted that the court has an inherent obligation to investigate those charges and to either sustain them, if they are true, or dispel them, if they are false.

Equity and good conscience, as well as the well established case law required that the defendants' motion be denied in all respects as being frivolous.

The power of equity to grant relief against judgements the enforcement of which would be unconscionable is of long standing (Hazel-Atlas Glass Co. v. Hartford Empire, 321 U.S. 328).

As originally adopted, F.R.C.P. Rule 60, generally governing the subject of relief against judgments, did not purport to impair recourse to an "action" for such relief (Oliver v. City of Schattuck, 157 F2d 150), and amended Rule 60(b) provides that it does not limit the power of the Court to entertain "an independent action" to relieve a party from a judgment, order or proceeding, or to set aside a judgment for fraud.

Case law has long held that with the merger of law, equity and admiralty, and with the general abolition of procedural distinctions, it is almost always the same Court which rendered a judgment which is the most appropriate one to apply to for

"equitable" relief. Any other Court, if applied to, will always totally defer to the original Court on the principle of Comity (Lapin v. Shutton, Inc., 333 F2d 169) resulting in the rule that an application for equitable relief now must be made to the Court which rendered the judgment thus collaterally attacked (Hartford Empire Co. v. Hazel-Atlas Glass Co., 125 F2d 976). When an independent action to relieve a party from a judgment or order is brought in the Federal Court that rendered the initial judgment there is ancillary jurisdiction over the action despite the absence of a Federal question of diversity of citizenship (Martina Theatre Corp. v. Schine Chain Theatres, Inc. 2786 F2d) by reason of the fact that the application is now commonly made to the same court which rendered the judgment, and because of the general disregard of technical refinements. If a situation within the recognized scope of the precedents and calling for relief in good conscience is presented, whether by Motion, Petition, or the general commencement of a new action, the Court will not be too concerned about the form or method of its presentation (Dunlevy v. Dunlevy, 38 F 459; American Inc. Co. v. Lucas, 38 F Supp. 926, affirmed 129 F2d 143). The proper parties to an application for equitable relief are only those who were parties to the original judgment (Hanna v. Brictson Manuf. Co., 62 F2d 139).

The limitation as to the time for Motion provided in

amended Rule 60(b) is inapplicable to an independent action for relief, since it is stated in the Rule that "this Rule does not limit the power of the Court to entertain an independent action," etc. (In re: Casco Chemical Co., 335 F2d 645). A Federal District Court has inherent power in the exercise of its inherent judicial discretion to vacate a judgment obtained through fraud or connivance, and such power is strengthened by Rule 60(b) which expressly provides that it does not limit the power of a Court to entertain an independent action for relief from a judgment, order or proceeding, or to set aside a judgment.

Laches is not evident in the present case because Carleton has made numerous applications by letter to the Court commencing immediately after the entry of the order sought to be vacated until the date hereof.

Carleton's prior independent action, although poorly pleaded, evidences his continuous desire to have his day in Court.

The facts submitted by Carleton in opposition to defendants' application, clearly show a diminished mental capacity, inadequacy of consideration, fraud, and duress. It has been held that the want of any consideration, or the shocking inadequacy of consideration justifies equity acting in the administration of justice to prevent an unconscionable result, in a proceeding to rescind or cancel

a document (Roux v. Rothchild, 37 Misc. 435, 75 NYS 763 Aff. 78 AD 637, 79 NY Sup. 1145.).

Inasmuch as the releases and stipulation were executed as a part of a Federal court proceeding, intermingled inextricably with the order sought to be vacated, the subject matter of rescission must be treated simultaneously with the subject matter of relief from the order.

The affirmative defenses presented by the defendant are not worthy of comment other than that contained in the summary of the argument above.

POINT II

PLAINTIFF'S MOTION FOR RENEWAL AND/or REARGUMENT WAS TIMELY: IT DID NOT VIOLATE LOCAL RULE 9(m)

The defendants have asserted that plaintiff's motion for renewal and/or reargument was correctly denied because it was not timely made in direct violation of Local Rule 9(m). Local Rule 9(m), in pertinent part, states as follows:

> "A notice of motion for reargument shall be served within ten (10) days after the filing of the court's determination of the original motion ..."

The defendants' motion for summary judgment was granted and the judgment was entered June 10, 1974 (Appendix at page 107). Applying Rule 9(m), we did find that a motion for reargument must be made before April 20, 1974. However, the court will take judicial notice of the fact that April 20, 1974 was a Saturday and that the next business day of the court was April 22, 1974, a Monday, on which the plaintiff moved for reargument and/or renewal (Appendix at page 108).

The appellant respectfully asserts that the motion was timely made, the day time limit does not apply to a motion seeking renewal of a prior motion and that strict adherence to the rule should be relaxed in view of the circumstances stated in the original moving papers.

Under the Federal Rules of Civil Procedure, Saturdays are treated in the same manner as Sundays or legal holidays for purposes of computation of time (see Rule 6(a) of the Federal Rules of Civil Procedure, as amended effective July 1, 1973, and Advisory Committee's note thereto). Thus a Saturday should not be included when it falls on the last day of a computed period (Rule 6(a) Federal Rules of Civil Procedure as amended effectuve July 1, 1963). It is provided by Rule 6(a) that in computing any period of time prescribed or allowed by the Federal Rules of Civil Procedure, by the Local Rules of any District Court, by order of court or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed is to be included, unless it is a Saturday, a Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. Rule 6(a) is manifestly an attempt to lay down rather comprehensive regulations for the computation of time periods, and the rule is liberally and realistically construed to accomplish that which it recognizes; namely the general suspension of work and labor on Sundays and other days set aside for observance of a public purpose (Prudential Oil & Minerals Co. v. Hamlin, 261 F. 2d 626).

Accordingly, the motion was timely made as a matter of law.

Additionally, the ten-day local rule does not apply to

motions for renewal and the plaintiff's motion was one for renewal and/or reargument.

Further, and most important, strict adherence to Local Rule 9(m), should plaintiff be found to have violated said rule, would be highly prejudicial to a man who is acting pro se in such a ticklish case.

POINT III

IN THE ABSENCE OF A VALID AFFIRMATIVE DEFENSE AND WITH CLEARLY DELINEATED ISSUES OF FACT, IT WAS AN ERROR FOR THE LOWER COURT TO GRANT DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

The purported affirmative defense that relief from an order or judgment may not be obtained by independent action is unsubstantiated as a matter of law, as discussed hereinbefore in greater detail. The other phantom affirmative defenses (release, res judicata, etc.) are not worthy of discussion before this court because an action to rescind a general release is not barred by the existence of that release and a claim to set aside a prior judgment is not barred by the existence of that prior judgment.

Carleton alleges in his complaint the necessary grounds for the relief he desires. In his affidavit in opposition of defendants' motion for summary judgment and in his affidavit in support of his motion for reargument and/or renewal, Carleton develops these allegations and even supplies volumes of documentary evidence.

If no other conclusion can be drawn from all of the papers submitted in the motions, one may conclude that there are triable issues of fact. It has been long held that the court may not grant summary judgment if it finds that an issue of fact exists:

Begnaud v. White, 170 F. 2d 323 (CA 6th);

Mosbacher v. Basler, etc., 111 F. Sup. 551 (D.C., S.D.N.Y.);

The Garrett Biblical Institute v. American University, 82 U.S. App. D.C. 265, 163 F. 2d 265;

United States v. Haynes School, 102 F. Supp. 843 (D.C., E.D., Ark.);

Steinberg v. Adams 90 F. Sup. 604 (D.C., S.D.N.Y.).

A "summary judgment" may be loosely defined as a judgment by a court in a case pending before it when as a matter of law the proceedings show that there is no issue between the parties (Guerrere v. American-Hawaiian S.S. Co., 222 F. 2d 238).

With substantial issues of fact having been presented, including a major fraud perpetrated upon the trial court as an enducement for the trial court to render a judgment in the prior proceeding, equity and good conscience dictates that this plaintiff be given his day in court and not be summarily thrown out of court for no valid reason.

The affirmative defense that relief from a judgment or order may not be obtained by independent action is totally false and equity does in fact have the power to grant relief against judgments the enforcement of which would be unconscionable (Hazel Atlas Glass Co. v. Hartford Empire 321 U.S. 328.

CONCLUSION

The judgment, order and decisions of the trial court, which summarily deprived the plaintiff of his day in court, constitute a traversty of justice, without legal authority, and must be reversed.

It is respectfully submitted that this court should reverse the judgment and order granting summary judgment, and direct the defendants to file their answer within a reasonable period of time so that this plaintiff may finally have a day in court.

Respectfully Submitted,

ROBERT A. W. CARLETON, JR.
Plaintiff-Appellant, Appearing Pro Se

Palisades, New Jersey
August 30, 1974.

AFFIDAVIT OF SERVICE

State of New York)
City of New York : ss.:
County of New York)

A. JUNE VICKERS, , being duly sworn, according to law, deposes and says:

1. That deponent is not a party to the action, is over 18 years of age, and resides in the city, county and state of New York.

2. That on the 30th day of August, 1974, deponent served two copies of the within appellant's brief upon appeal upon Messrs. Amend and Amend, attorneys for Union Free School District #8, Town of Orangetown, Rockland County, New York, George W. Renc, Lee N. Starker, Edward C. Manning, Walter Reiner, and Richard Stobeaus in this action, at 40 Wall Street, New York, New York 10005, the address designated by said attorneys for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the city, county and state of New York.

A. June Vickers
A. JUNE VICKERS

Sworn to before me this
30th day of August, 1974

Inge F. DeVaney

INGE F. DeVANEY
Notary Public, State of New York
No. 31-6006135
Qualified in New York County
Commission Expires March 30, 197 6

AFFIDAVIT OF SERVICE

State of New York)
City of New York :ss.:
County of New York)

A. JUNE VICKERS, being duly sworn, according to law, deposes and says:

1. That deponent is not a party to the action, is over 18 years of age, and resides in the city, county and state of New York.

2. That on the 30th day of August, 1974, deponent served two copies of the within appellant's brief upon appeal upon Messrs. Bernstein, Weiss, Parter, Coplan and Weinstein, attorneys for defendant-appellee Caudill, Rowlett & Scott, at 120 East 41st Street, New York, New York 10017, the address designated by said attorneys for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in an official depositoryunder the exclusive care and custody of the United States Postal Service within the city, county and state of New York.

A. June Vickers
A. JUNE VICKERS

Sworn to before me this
30th day of August, 1974

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